



**United Nations  
Conference  
on Trade and  
Development**

Distr.  
GENERAL

TD/B/COM.1/EM.22/2  
18 June 2003

Original: ENGLISH

---

TRADE AND DEVELOPMENT BOARD  
Commission on Trade in Goods and Services, and Commodities  
Expert Meeting on Market Access Issues in Mode 4  
(Movement of Natural Persons to Supply Services)  
and Effective Implementation of Article IV on  
Increasing the Participation of Developing Countries  
Geneva, 29–31 July 2003

**INCREASING THE PARTICIPATION OF DEVELOPING COUNTRIES THROUGH  
LIBERALIZATION OF MARKET ACCESS IN GATS MODE 4 FOR MOVEMENT  
OF NATURAL PERSONS SUPPLYING SERVICES**

**Note by the UNCTAD secretariat**

**Executive summary**

Developing and least developed countries are likely to receive substantial gains from the ongoing GATS negotiations if meaningful liberalization of market access for temporary movement of natural persons (MNP) providing services under the GATS is achieved. This is an area where market forces should be allowed to operate more than has been the case so far, as even limited liberalization would provide gains to the world economy exceeding those that could be obtained from liberalization in traditional areas of trade. The growing number of bilateral arrangements in the area of MNP, providing for easier access by professionals at various skill levels and special access in certain other categories, especially between developed and developing countries, amply demonstrates the existence and importance of market demand and supply for cross-border MNP. Current national practices outpace what countries offer in their specific commitments in the context of multilateral trade negotiations. Despite being recognized as the key area of importance for developing countries, mode 4, under which benefits accrue directly to developing countries, has not featured prominently in the Doha Agenda. This may need to be taken into account at the WTO Ministerial Meeting in Cancún. Effective market access in mode 4 would depend on how it will be addressed in the context of discussions on domestic regulation under the Article VI and the recognition of qualifications and equivalent experience, and on multilateral progress in making visa and permit systems less restrictive for trade.

## CONTENTS

	<i>Page</i>
<b>Introduction.....</b>	<b>3</b>
<b>I. Economic implications of the movement of natural persons .....</b>	<b>3</b>
A. Dynamic factors behind trade in mode 4 .....	3
B. Welfare gains to developed and developing countries from liberalization of mode 4 .....	5
<b>II. Increasing the participation of developing countries in trade in services .....</b>	<b>9</b>
A. Ongoing multilateral negotiations on services .....	11
B. Market access conditions and constraints on the movement of natural persons .....	12
1. Economic needs tests under the GATS .....	12
2. Issues arising in relation to the granting of entry visas and permits.....	13
3. Recognition of qualifications .....	13
4. Differential treatment of domestic and foreign natural persons .....	14
<b>III. Modalities for liberalization and facilitation of trade in mode 4 and policy recommendations on issues of priority interest to developing countries.....</b>	<b>15</b>
<b>Annex .....</b>	<b>18</b>

## INTRODUCTION

1. This note examines the main factors behind the movement of natural persons (MNP) supplying services under the GATS (mode 4) and identifies the main features of this type of trade and the prospects for effective participation by developing countries in trade.<sup>1</sup> The growing importance of services in international trade has created new patterns for investment and exchange of skills. Temporary movement of service suppliers has become an important factor in bilateral, regional, subregional and multilateral trade and an important issue in all of these liberalization negotiations. In the absence of a multilateral framework supported by GATS-specific commitments that ensures temporary movement, national laws restricting it would come into conflict with the trade and economics of globalization. The lack of multilateral progress in the area of mode 4 negotiations perpetuates the asymmetry between free movement of capital and the lack of it for MNP supplying services across national boundaries.

### I. ECONOMIC IMPLICATIONS OF THE MOVEMENT OF NATURAL PERSONS

2. To study the economic impact of MNP, the aspects of public finance (in relation to taxation and social security issues), international trade and labour economics (through the impact on the labour market) have to be taken into account. In economics, theory is universal, with the same fundamentals applied across topics and fields. Thus, the effects of trade liberalization would have the same implications in the case of trade in goods as in the case of trade in services, including those provided by natural persons temporarily moving across borders. At the same time, MNP has features in common with regular migration. The main feature here is that for a given period of time one country is losing and another is gaining a worker, which is linked to factor mobility. Other politically, socially and culturally sensitive features related to movement of labour also apply, but to a considerably lesser degree.

#### A. Dynamic factors behind trade in mode 4

3. Developing countries, under the new economic environment of deregulation and privatization of publicly owned enterprises and trade liberalization as part of the process of structural reform, are facing growing structural unemployment and underemployment problems. This results in an increasing internal push for cross border supply of services into

---

<sup>1</sup> In this note, the terms 'mode 4' and 'MNP' are used interchangeably and imply supply of services through temporary movement of natural persons under the GATS. This is not to be understood as a form of permanent migration, though temporary movement has some common elements with migration, as discussed in the note. Given available data, economic analysis so far has covered temporary movement only to a limited extent, and inferences concerning economic effects are based on the analysis of migration at large. Certain adjustments may need to be made in applying these findings to temporary movement. MNP through mode 4 represents a special case in the bigger picture of global dynamics.

foreign markets. Non-economic factors, like information, are important even when the underlying factors are economic. To turn MNP potential into economic benefit, barriers maintained in major markets abroad should be overcome. (See Table 1 on the following page for an example of recent trends in temporary migration.)

4. Liberalization in developing countries, which is actively promoted, has short- and medium-term adjustment costs that are particularly concentrated in agriculture and traditional manufacturing sectors. These costs usually result in the loss of employment. Because of the limited domestic employment opportunities and the time necessary for structural change, MNP emerges as a very interesting way in the immediate term to alleviate the costs. Many countries thus find themselves dependent on inward and outward MNP.

**Table 1**  
**Temporary Migrants to the United States and Canada: Census Data**

Country	Temporary migrants	Foreign-born population	Total population	Proportion of temporary migrants in	
				Foreign-born population (%)	Total population (%)
<b>United States</b>					
April 1990	487,500	19,767,300	248,709,900	2.5	0.2
April 2000	781,500	31,107,900	281,421,900	2.5	0.3
<b>Canada</b>					
June 1991	223,400	4,566,300	26,994,000	4.9	0.8
May 1996	166,700	5,137,800	28,528,100	3.2	0.6
May 2001	198,600	5,700,800	29,639,000	3.5	0.7

*Sources:* Cassidy R and Pearson L (2001), Evaluating components of international migration: Temporary (legal) migrants, Population Division Working Paper No. 60, US Census Bureau; Statistics Canada (1992), *Immigration and Citizenship*, Ottawa, Supply and Services Canada; and unpublished data.

5. On the *demand* side, MNP occurs for a number of reasons, which also happen to be those that are key to international trade in general – that is, different factor endowments across countries; increased business and capital mobility; labour shortages (e.g. in the Middle East) and insufficient skills among certain segments of the population (e.g. in the United States, Germany, South-East Asia and Southern Africa); aging populations (for whom associated services cannot otherwise be delivered); and the existence of jobs which social security schemes allow nationals to refuse. Outsourcing and offshore activities involving low-cost developing countries are increasingly important and are linked with on-site delivery of services, which is expected to reach 3.3 million jobs and US\$136 billion in wages by 2015.<sup>2</sup> (See Box 1.)

6. On the *supply* side the main “push factors” include demographics and the lack of adequate employment opportunities at home. The “pull factors” include wage differences and associated labour productivity across markets as well as perceived quality of life and a stream of income. Liberalization of markets for goods and financial assets has narrowed price

<sup>2</sup> *Business Week* (2003). 3 February.

differentials, with price wedges rarely exceeding a ratio of 2 to 1. Wages for similarly qualified persons in high- and low-income economies may differ by a factor of 10 or more. Economic inference suggests that liberalization of cross border movement of persons would yield benefits 25 times larger than in traditional areas of trade in goods and capital.<sup>3</sup>

**Box 1**  
**India's Experience**

It is estimated that during the 1980s on average more than 100,000 persons left India each year for employment purposes. This number rose to over 400,000 annually in the 1990s, reflecting the impact of India's economic liberalization on labour flows. Skilled and white-collar workers constituted 20 per cent of the total number of persons moving abroad to the Middle East, developed countries and South-East Asia.

The positive contribution of MNP to the home economy is exemplified by the case of the state of Kerala, which had a large number of persons move to the Middle East to work in services industries, and where construction of the international airport in Cochin was in part made necessary by the travel of Keralite workers to Gulf countries. (These workers also helped finance the construction.) Indian service suppliers on average saved 45 per cent of their income, most of which was remitted home, and in the case of Kerala cash remittances in 1998 constituted 9 per cent of the state's domestic product.

The information technology (IT) sector in India now accounts for most of the MNP, driven by the rising demand in world markets for on-site services such as custom applications, software development and maintenance work. The main market is the United States, where services are delivered mainly in the insurance, banking, energy and telecommunications industries. In 2001, on-site services contributed US\$3.7 billion of revenues in India out of a total of US\$ 7.7 billion. In most years, on-site services provided by Indian programmers, coders, systems analysts and maintenance personnel have accounted for up to 50 per cent of export revenue in the IT sector. On-site work accounts for the movement of 15 per cent of a total stock of 428,636 IT professionals, who usually are allowed by their visas to stay for a maximum of six years. The cross-border movement of service providers has wages to rise in the IT industry across all occupational levels in India, exceeding the average wages of professionals with similar qualifications in other industries.

So far the return rate of these professionals has been low, partly because of the persistent demand for IT services in the industry. However, recent years have seen a reversal of this trend, which can be partly explained by growing opportunities in India and the establishment there of global companies such as Infosys and Wipro. Returnees have been instrumental in influencing foreign multinationals to set up operations and do offshore work in India and have often used their savings or obtained venture capital to set up private enterprises in the IT sector or to expand into new lines of business. Indians who continue working abroad have been investing in small to medium-sized enterprises (SMEs) in India with annual sales ranging from US\$5 to 20 million and that employ from 100 to 300 IT experts, of whom 70 to 80 per cent are local professionals. MNP has helped by selling India as a safe and attractive destination for trade and investment by foreign investors and by promoting outsourcing of services to Indian companies, which in turn has further facilitated MNP.

*Source:* Based on the study prepared by Rupa Chanda for UNDP Asia Trade Initiative, UNDP Vietnam, April 2003.

**B. Welfare gains to developed and developing countries  
from liberalization of mode 4**

7. A review of the economic literature on migration indicates that immigration does not have significant adverse effects on the receiving economy. It does not lower employment rates; on the contrary, in times of growth, immigrant labour makes growth in general employment possible by enabling more voluminous expansion (e.g. according to studies

<sup>3</sup> Rodrik D (2002). *Feasible Globalizations*. See [www.cepr.org/pubs/dps/DP3524.asp](http://www.cepr.org/pubs/dps/DP3524.asp).

conducted in the United States in the 1990s); and, although some studies have found economically significant negative effects on native wages, these magnitudes are probably overestimates, especially where economies are engaged in trade and face open markets. Evidence of mode-4-related trade reducing employment or host country labour force participation rates, or increasing unemployment, is even harder to find.<sup>4</sup>

8. Table 2 demonstrates a unique effort by selected countries at the regional level to fill the gaps in available data for measuring temporary MNP. The result has surprised many, demonstrating, for example, that earlier data that put the number of foreign nationals temporarily entering the United States at 1,234,112<sup>5</sup> significantly overestimated the actual presence of such persons, which was found by the US Census Bureau to be 781,500.

9. A person's ability to earn a higher income in the host country signifies higher productivity and global economic gain. Increase in trade through mode 4 as part of the increase in labour mobility internationally would lead to global income increases – according to some econometric estimates, so increases of up to 150 per cent.<sup>6</sup> Some models show that increasing developed countries' quotas for incoming mode 4 by 3 per cent of their labour forces would generate annual gains of more than US\$150 billion.<sup>7</sup> In addition, host or destination countries obtain a new source of ideas and creativity, while home countries gain in terms of new knowledge and business and trade opportunities through networking.

10. Movement also entails economic costs for the individual and the home economy. In many developing countries, opportunity costs in terms of lost potential output, tax revenue and public investments are likely to be minimal owing to scarce employment opportunities and limited capacity for collecting income taxes. More than 30 per cent of professionals in Kenya and more than 20 per cent in Argentina are underemployed. Furthermore, the costs are more than likely to be offset by gains (e.g. through income remitted to the home economy).<sup>8</sup> MNP is the most effective tool for achieving poverty reduction, as the benefits go directly to people in developing countries, and it contributes to improving gender outcomes (see Box 2 on the following page). MNP increases the return on education and encourages investment in human capital in the home economy, thus ensuring the continued domestic availability of skills. Where movement involves less-skilled persons, it is likely to have a positive impact on the wages of less-skilled persons in the home economy by changing the ratio between skilled and less-skilled labour. In the host economy, where mode 4 trade is spurred by a lack of nationals interested in filling certain jobs, wages are not likely to decline, as foreign service providers will probably not be perfect substitutes for national ones.

---

<sup>4</sup> Hunt J and Friedberg R (1999). Immigration and the receiving economy. In Hirschman C et al. (eds.), *Handbook of International Migration: The American Experience*. New York, Russell Sage Foundation.

<sup>5</sup> Communication from the United States to the GATS Special Session, TN/S/W/12.

<sup>6</sup> Hamilton C and Whalley J (1984). Efficiency and distributional implications of global restrictions on labour mobility: Calculations and policy implications. *Journal of Development Economics* 14 (1–2), 61–75.

<sup>7</sup> Winters LA (2002). The economic implications of liberalizing mode 4 trade. Paper prepared for the Joint WTO–World Bank Symposium on “The Movement of Natural Persons (Mode 4) Under the GATS”, Geneva, 11–12 April.

<sup>8</sup> This income is invested in agriculture, housing purchases, infrastructure development, educational and health facilities, and as capital for starting businesses.

**Table 2**  
**Top 10 Countries of Origin for Temporary Migrants**  
**to Canada and the United States: Census Data**

**Canada**

1991				2001			
Rank	Place of birth	Number	%	Rank	Place of birth	Number	%
1	United States	18,200	8.1	1	United States	20,500	10.3
2	Philippines	15,100	6.8	2	People's Republic of China	12,700	6.4
3	Sri Lanka	12,700	5.7	3	Republic of Korea	12,200	6.1
4	Hong Kong (China)	11,000	4.9	4	Japan	8,600	4.3
5	People's Republic of China	10,900	4.9	5	United Kingdom	8,600	4.3
6	United Kingdom	9,300	4.2	6	India	7,500	3.8
7	Iran	8,200	3.7	7	Mexico	6,500	3.3
8	Trinidad and Tobago	7,000	3.1	8	Philippines	6,500	3.3
9	Japan	6,800	3.0	9	France	5,800	2.9
10	India	5,800	2.6	10	Countries of the former USSR	5,600	2.8
	Subtotal (10 countries)	105,000	47.0		Subtotal (10 countries)	94,500	47.6
	Other countries	118,400	53.0		Other countries	104,100	52.4
	TOTAL	223,400	100.0		TOTAL	198,600	100.0

**United States**

1990*				2000			
Rank	Place of birth	Number	%	Rank	Place of birth	Number	%
1	Japan	63,100	12.9	1	India	98,000	12.5
2	Taiwan Province of China	55,700	11.4	2	Taiwan Province of China	79,500	10.2
3	Republic of Korea	29,600	6.1	3	Japan	73,200	9.4
4	India	26,000	5.3	4	Canada	58,500	7.5
5	Canada	23,400	4.8	5	Republic of Korea	54,400	7.0
6	United Kingdom	19,900	4.1	6	Mexico	31,200	4.0
7	Philippines	18,500	3.8	7	United Kingdom	29,000	3.7
8	Mexico	18,200	3.7	8	Germany	27,000	3.5
9	Germany	11,200	2.3	9	Colombia	15,700	2.0
10	Iran	9,300	1.9	10	Philippines	14,100	1.8
	Subtotal (10 countries)	274,700	56.4		Subtotal (10 countries)	480,600	61.5
	Other countries	212,700	43.6		Other countries	300,900	38.5
	TOTAL	487,500	100.0		TOTAL	781,500	100.0

\*Persons who "came to stay" in the United States in 1987 or later.

Sources: Canadian Census of Population unpublished data for 1991 and 2001; Cassidy R and Pearson L (2001), Evaluating components of international migration: Temporary (legal) migrants, Population Division Working Paper No. 60, US Census Bureau.

11. Brain drain continues to be cited as one of the major drawbacks of the movement of skilled temporary workers, as it may reduce the average level of human capital in the sending country and impede its economic growth (when the emigration of persons with tertiary education reaches a level where the productivity of the domestic economy declines). The negative effects of brain drain are relatively well established and documented.<sup>9</sup> This phenomenon may occur within the country in regional terms or where a sector does not provide adequate employment opportunities. The problem may be accentuated by a country's size and may be more pronounced in certain parts of the world. However, for service

<sup>9</sup> An overview of different approaches may be found in Lowell BL and Findlay A (2001). *Migration of Highly Skilled Persons from Developing Countries: Impact and Policy Responses*. Geneva, International Labour Organization.

suppliers who have been undercontributing or not contributing at all to domestic GDP, movement does not cause a meaningful decrease in domestic productivity. Empirical studies also suggest that there is an “optimal level of migration” that stimulates pursuit of higher education at home and spurs economic growth.<sup>10</sup>

### **Box 2**

#### **The Case of Bangladesh**

Catalysts contributing to the movement of Bangladeshi nationals abroad have included (i) foreign demand, (ii) proactive policies in the home market, (iii) an increase in the number of fee-charging entrepreneurs, and (iv) a social network of those working abroad. In 1998 a total of 268,000 persons left the country for employment purposes, and 32 per cent of them were skilled personnel. While two-year contracts were a common form of employment of Bangladeshi nationals abroad, the total average stay has been just over three years, while some 25 per cent have extended their stay beyond five years. The proportion of persons with lower skills moving abroad has increased since the 1990s as investment in infrastructure in the Middle Eastern countries has slowed and demand for maintenance and domestic help has remained relatively high, along with demand for nursing services. The growth of remittances has increased steadily, and since 1996, 83 per cent have originated from Asian countries, while 14 per cent have come from developed countries. By 1997, remittances through official channels reached 37 per cent of the annual value of exports and accounted for 30 per cent of national savings. The savings of those moving abroad to provide services have served as investment income for buying land and constructing housing. Some 2 per cent of savings was used for investing in private business, while the rest translated into increased consumer spending in the home economy. The average savings rate has been 7 per cent, with nurses saving the most consistently, and the majority placing money in bank accounts. For a majority of women, moving abroad was the only opportunity to obtain employment, as only 45 per cent of those supplying services abroad were employed prior to their departure. In fact, half of these women became primary earners in the family upon their return, providing more than 60 per cent of the family income. In contrast, only 30 per cent had contributed up to 40 per cent of income before departing to work abroad. In general, the temporary movement of women to provide services abroad has been found to have a net positive effect on the economy of the home country, taking into account both economic and social factors.

*Source:* Analysis based on International Organization for Migration (2000), *Temporary Labour Migration of Women: Case Studies of Bangladesh and Sri Lanka*. Geneva, IOM.

12. In addition, other factors including investment and increase in financial capital, including new trade opportunities, may more than offset this cost to the home economy. Recent trends imply that “brain circulation” is a more appropriate term to describe the exchange of skills in international trade in services. For example, in Australia, the non-return rate<sup>11</sup> of temporary entrants, including persons from developing countries, fell to 2.2 per cent in 2001. A survey of 1,500 Chinese and Indians working in Silicon Valley in the United States found that 50 per cent of them went back home at least once a year and 5 per cent returned at least five times. In addition, 74 per cent of Indian respondents and 53 per cent of Chinese ones intended to start a business back home.<sup>12</sup> Making temporary movement viable could be one of the best ways to attenuate permanent migration and its consequences for both sending and receiving countries.

<sup>10</sup> Ibid.

<sup>11</sup> This refers to people who are still in Australia after their visa expires, whether on another visa, on a bridging visa or unlawfully. *Population Flows: Immigration Aspects* 2001 Edition, DIMIA.

<sup>12</sup> *The Economist* (2002). A survey of migration. 2 November.



13. Governments in developed and developing countries have an important role to play in maximizing the development dividends of mode-4-related trade by both ensuring an optimal mix of policies and liberalization of market access for their services suppliers moving abroad and ensuring the temporariness of such movement, in addition to ensuring that the rights of their nationals are protected abroad. Policies are needed to support technology transfer, facilitating remittances or investments by making such transfers less costly<sup>13</sup> through the use of new technologies and ensuring competition in this segment of financial services. Promoting investment in developing countries in education and training may bring mode-4-related trade benefits in the short run and lead to economic development in the long run. Creating a favourable domestic environment for work and investment also guarantees increasing returns on trade in mode 4 and better reintegration of skills obtained abroad.

## **II. INCREASING THE PARTICIPATION OF DEVELOPING COUNTRIES IN TRADE IN SERVICES**

14. Demand for certain skills has been growing in recent years, as evidenced by changes in regulations to facilitate the temporary movement of service providers. Examples include the introduction of a “green card” system in Germany, a shift in emphasis from permanent towards temporary migration in Australia, and extension of the permitted duration of temporary stay in Japan. The number of permits for temporary-employment-based entry into Australia<sup>14</sup> increased from 40,000 in 1992 to 120,245 in 2000, while the number of permanent entries remained at 50,000 to 60,000 during the period. In the United States, temporary-employment-based entries increased from 441,078 in 1992 to 1,356,808 in 2001, while permanent entries stood at 52,014 in 1992 and 83,150 in 2001<sup>15</sup>.

15. Movement of natural persons with lower skills accounts for the largest share of international mobility, while the programmes in most destination markets favour and attract those with higher skills. In terms of remittances, those with middle-level and lower skills tend to send the highest proportion of their income back home. Bilateral agreements<sup>16</sup> between origin and destination countries are a way for destination countries to better meet their market needs and usually extend over the whole range of skills to include even categories of persons not presently covered by the GATS (e.g. recruitment for work in the police force). (See Box 3 for a discussion of who is covered under mode 4.) They also provide for facilitated movement of skilled persons. Some countries have introduced measures to ensure that movement to their markets remains temporary in effect and have committed to investing in monitoring of returns and in training programmes conveying skills that will be useful to service suppliers when they return to their home countries.<sup>17</sup> Bilateral agreements introduce effective

---

<sup>13</sup> The transaction costs related to sending of remittances sometimes reach 10 to 15 per cent of total value, with the global business totalling US\$6 to 7 billion annually.

<sup>14</sup> <http://www.immi.gov.au/statistics/index.htm>

<sup>15</sup> According to the INS Statistical Yearbook, 2002. The level of permanent-employment-based migration is fixed by law and does not change. Spouses and children are included. Only a few categories of temporary MNP have numerical ceilings. Temporary entry includes temporary workers, exchange visitors and intra-company transferees, as well as multiple entries by the same person over time.

<sup>16</sup> For example, Spain alone seems to have signed at least seven bilateral agreements.

<sup>17</sup> An example is the employment of nurses in the Netherlands.

discrimination based on origin of services provided while demonstrating that both demand and supply exist for MNP.

16. Service industries tend to be dominated by SMEs. These firms engage in international trade through electronic cross-border trade and by moving temporarily to provide on-site services to customers. To facilitate trade by SMEs, liberalization of market access for mode 4, which is de-linked from commercial establishment, is necessary. This is particularly true for SMEs in developing countries, which usually employ three to five employees and supply professional services like engineering expertise; they have realized that the only way to sustain operations in such situations is to reach out into foreign, often neighbouring markets.

### Box 3

#### Who Is Covered under GATS Mode 4?

MNP under the GATS as mode 4 is introduced in GATS Article I, the Annex on the Movement of Natural Persons Supplying Services under the Agreement, and (in terms of actual market access) in the GATS-specific commitments of individual WTO members. There is no a priori exclusion of any occupation or skill level from the GATS. The Annex establishes that MNP is for seeking “non-permanent” entry and “temporary” stay for the supply of services abroad, but it gives no specific timeframe to define “temporary”.

Trade in services through mode 4 covers natural or juridical persons (to the extent the latter employ foreign nationals in the host country) and may include:

- (a) Persons employed by a company providing services abroad: (i) Natural persons are transferred to work for the same company in its office abroad. This type of movement is called an *intra-corporate transfer*. (ii) A company is contracted for a specific task and brings its own employees or recruits/subcontracts them in another country to deliver a service without establishing a permanent commercial presence there. This type of movement is known as *contractual service supply*.
- (b) A natural person, as an individual service provider, (i) moves abroad to provide services directly to the market, acting as a self-employed or independent service provider; or (ii) is employed as a foreign national by a host country company, which can be foreign or national.
- (c) Business visitors: (i) Persons who travel for the purpose of negotiating a contract or simply establishing contacts. (ii) Persons who set up business in a new location where they did not previously have a business. (iii) Persons in other categories not deriving remuneration directly from within host economy (e.g. after-sale services).

Would persons supplying services under the GATS enter employment (or the labour market)? Normally, persons under (a) and (b) need a work permit and must comply in terms of working conditions, social security and other obligations for employment of foreign nationals in a (foreign- or national-owned) domestic company. In many countries intra-corporate transferees fall under the local labour and employment legislation and are considered to be entering the labour market.

What is meant by the statement in the Annex that “Agreement shall not apply to measures affecting natural persons *seeking access* to the employment market of a Member”? The GATS is not an instrument enabling foreign nationals to cross borders in active search of employment. Rather, it aims to create a multilateral framework for the predictable exchange of skills and expertise.

Finally, the language in the Annex does not exclude employment in domestic companies. The Annex forms an integral part of the GATS when it comes to a discussion of MNP, as the notion of temporary movement is invoked only there, as is that of visas. Adopting these concepts means adopting the scope of mode 4.

17. Recent analysis of the economic effect of remittances has demonstrated their positive effect on savings and investment and on recipient countries' foreign exchange reserves, as well as their role as an insurance policy against risks associated with new production activities and as a stimulus for growth.<sup>18</sup> Their positive role is particularly pronounced for the least developed countries. The importance of remittances is second only to that of foreign direct investment (FDI) and exceeds that of foreign aid received. It must be stressed that remittances are in themselves insufficient to spur long-term economic development.

18. Outsourcing and offshore supply of services have increased experience of trade in mode 4 and led to greater participation by developing countries in cross-border trade in services (mode 1). For example, Wipro of India is processing claims for a major US insurance company and providing help desk support for a US Internet service provider at a cost that is up to 60 per cent lower than it would be in the United States. It is also providing scientific research for global pharmaceutical companies. The UK firm HSBC Securities Inc. maintains back offices in China. Philips of the Netherlands has shifted research and development to Shanghai. MNP has also led to trade through mode 3 (commercial presence), with Indian IT companies opening offices in Eastern Europe to cater to European clients.<sup>19</sup> Most importantly, trade in mode 4 contributes to building human capital in the developing countries. This is a necessary precondition for enhancing supply capacities in developing countries and is the most reliable guarantor for achieving sustainability of development objectives.

#### **A. Ongoing multilateral negotiations on services**

19. Initial offers<sup>20</sup> submitted by Australia, the United States, Iceland and Liechtenstein have made no improvements in market access for mode 4. The annex provides a comparative overview of initial offers by developed countries for categories of persons that may be of negotiating interest to developing countries. In general, these initial offers have not achieved balanced coverage and economically meaningful commitments with respect to all modes of supply. Specific liberalization commitments continue to give substantially more coverage to measures regulating commercial presence than to measures regulating MNP.

20. Among new offers, in the area of mode 4 Norway has scheduled the most extensive commitment, while the EC has made a real liberalization commitment. Japan's initial offer appears to be closely in line with existing conditions for admission of engineers and specialists, but it is not certain if the economic needs test (ENT) or its elements are eliminated from all measures affecting market access in Japan. New Zealand offered broad coverage of occupations of interest to developing countries but only for investment-related movement. Switzerland intends to remove quotas on the overall number of work permits, but

---

<sup>18</sup> World Bank (2003). *Global Development Finance: Striving for Stability in Development Finance*. Washington, DC, World Bank.

<sup>19</sup> *Business Week*, 3 February 2003.

<sup>20</sup> To date 25 WTO members have submitted their initial offers: Argentina, Australia, Bahrain, Canada, Hong Kong (China), Macao (China), Taiwan Province of China, the Czech Republic, the European Union, Iceland, Israel, Japan, the Republic of Korea, Liechtenstein, Mexico, New Zealand, Norway, Panama, Paraguay, Poland, Senegal, Saint Kitts and Nevis, Switzerland, the United States and Uruguay.

in the absence of a multilateral understanding, continues to maintain its own interpretation of “seeking employment”, which excludes MNP as individual service providers, allowing for bilateral deals in this category. In principle, the EC and Canada have made market-opening offers of the same order. For transparency purposes, the Canadian offer indicates if a particular category of person needs a work permit.<sup>21</sup> However, the Canadian quota of ten IT specialists per project does not seem to exist in the country’s legislation. The EC has eliminated the ENT for most of the categories included in its schedule, and introduced a new category of Graduate Trainees, which may be of interest to developing countries as a means of technology transfer. Contractual service suppliers, which hold most potential for export interest of developing countries, have been improved in scope and duration, and include Independent Professionals as a new category. These liberalization commitments in the initial offers of the EC, Canada, Norway and other countries represent a positive step in the right direction and would contribute towards creating momentum in mode 4 liberalization.

## **B. Market access conditions and constraints on the movement of natural persons**

21. The main outcome of the GATS negotiations in mode 4 should propose solutions to each of the barriers identified, including facilitation issues affecting trade in services through mode 4, and should deliver a framework to make MNP easier and less burdensome for exporting countries.

### **1. Economic needs tests under the GATS**

22. Economic needs tests (ENTs) and labour market tests<sup>22</sup> detract from the predictability of trading opportunities available to developing countries and undermine any progress in liberalizing market access. However, these tests normally do not apply to skills that are in short supply, or to selected categories of persons. For example, ENTs do not always apply to the entry of highly skilled workers into Canada (exemption-based); for key skilled activities in Australia; for work in firms of a certain size and for IT professionals in France; for IT and construction workers and nurses in Ireland; for engineers and specialists in Japan; for IT workers exempt from the regional test in Netherlands; and for H-1B and NAFTA skilled categories in the United States. A number of initial offers have excluded movement of investment-related personnel from the application of ENTs. This could be extended to other categories of persons and other services sectors. Such categories could be based on the so-called shortage occupations or specialty occupations.<sup>23</sup> Concepts used elsewhere in multilateral trade agreements such as “minimum market access” or “current market access” could also be considered in this context in establishing test-free market access by natural

---

<sup>21</sup> In the Friends of Mode 4 group, Canada has also submitted a proposal, separate from the tabling of initial offers, to improve the transparency of horizontal mode 4 commitments by providing sources of information on the laws, regulations and administrative procedures and guidelines specifically related to those commitments.

<sup>22</sup> It simply means that authorities have a right to deny market access to foreign nationals at their discretion. The most common justification for denial is that similarly qualified nationals are available.

<sup>23</sup> Reference to this list is made in the initial offer by New Zealand.

persons. It is important to ensure that economic or similar needs tests are not introduced into any other instruments regulating market access.

## **2. Issues arising in relation to the granting of entry visas and work permits**

23. Measures related to the entry of natural persons into a foreign country, as with visas and work permits, can be a serious administrative obstacle to trade in services by developing countries through mode 4, nullifying the value of the specific commitments made. A number of requests submitted bilaterally seek multiple-entry visas for service providers or an automatic extension of their stay. Some countries have supported the establishment of a GATS or Service Provider visa to address the problems usually confronted by nationals of developing countries in this respect.<sup>24</sup> This new visa category is meant to help separate mode-4-related movements from being considered as part of immigration and to emphasize the special nature of such movements. One or another type of GATS visa is already in use by a number of countries;<sup>25</sup> however, the conditions under which such visas are issued may not meet expectations from the GATS perspective. Issuing visas of different duration for persons with the same qualifications and for the same purpose of entry but of different nationality leaves some at a competitive disadvantage, especially where such visas determine the duration of a work permit.

24. To ensure that the requirement to obtain a work permit does not detract from the liberalization achieved under the GATS, countries might consider adopting the following set of procedures<sup>26</sup> for issuing visas for GATS-related MNP:

- Visa applications can be submitted via the Internet and processed electronically;
- The importance of being able to provide services in a timely fashion is taken into consideration.
- Processing of a visa does not exceed 24 hours.
- There is no charge for online processing of a visa application.
- Transparency is ensured by providing on the Internet complete, current information concerning visa requirements, including application forms and guidelines
- A contact/reference point is established for obtaining timely clarification of related issues as needed, and instructions for accessing this reference point are made public

Similar issues have arisen in connection with improving customs procedures and efficiency under trade facilitation.

## **3. Recognition of qualifications**

25. Developing countries are particularly affected by the perception of their having low or inadequate professional standards, by lack of recognition of the equivalency of their educational degrees and qualifications, and by the inability of their regulatory authorities to

---

<sup>24</sup> WTO Communication from India, S/CSS/W/12.

<sup>25</sup> For example, for the UK approach, see <http://www.workpermits.gov.uk/>.

<sup>26</sup> This list is based on the highly regarded approach adopted in the United Kingdom.

certify professional qualifications in a way that technically and procedurally meets criteria established in developed-country markets. However, when developed countries face staffing shortages in certain professions or occupations, they are able to adopt an expedited and facilitated process and recognize qualifications obtained in developing countries. In addition, intra-corporate transfers are usually not subject to restrictions relating to recognition of qualifications. The number of MNP professionals in respect of whom employers make the decisions on their selection is on the rise, for example in the United Kingdom, Germany and France. This suggests that the recognition of qualifications may be unnecessarily stringent and that it is an effective barrier to entry for service professionals from developing regions.

26. In general, assessment of qualifications and/or skills for entry into an occupation may involve one or more of the following processes/mechanisms:<sup>27</sup> (i) *mutual recognition agreements* for occupations (engineering, actuarial) or for groups of countries (EU, Mercosur, NAFTA) or provinces/states; (ii) competency-based assessment by means of *employer interview* (in non-registrable occupations) or *test* (registrable or licensable occupations); (iii) *on-the-job competency assessment* - during or after a period of service (nursing); (iv) *probationary* or trial period of supervised work - such as teaching, medical practice;(v) *examination* of knowledge (such as medical tests) and/or language skills - often with no training or local experience;(vi) *credentials assessment* or assessment of paper qualifications, where institutions or individuals are assessed for comparability, ‘substantial’ equivalence or equivalence.

27. Developing countries would benefit most if progress at the multilateral level could be reached on the recognition of (i) experience and other non-educational aspects, (ii) how experience can substitute for education, and (iii) qualifications for groups other than highly skilled professionals. In promoting progress in the area of recognition, it is important to consider if at the national level a single system for the recognition of qualifications is necessary or alternatively a facilitated track could be applied for qualified foreign nationals that is fully recognized in the country. In the context of the ongoing negotiations, developing countries may benefit by obtaining information at the multilateral level on qualification requirements and procedures and information specifying the hierarchy of measures for obtaining such recognition, ways to expedite processing of licenses, authorizations or the recognition of qualifications, and associated fees.

#### **4. Differential treatment of domestic and foreign natural persons**

28. Contributing to a host country’s social security system may impose an additional burden on foreign nationals temporarily residing abroad if the payments are not refundable upon their departure, assuming their temporary stay will not be long enough to allow them to draw social security benefits. If they simultaneously contribute to their home country’s social security scheme, they are being subjected to double taxation. Bilateral agreements regarding social security schemes exist; these could be made universal and could establish equal or

---

<sup>27</sup> Robyn Iredale, “Gender and Accreditation: Valuing the Skills of Professional Women Migrants”, forthcoming.

equivalent commitments among and between countries, with countries committing to make associated payments and resolve associated obligations under the terms of agreement.

29. Foreign nationals living in a country frequently do not have access to the host country's subsidized services such as medical or pension insurance schemes, education, and housing, or to preferential income tax treatment. In some cases, they are not allowed to bring spouses or other family members with them, or spouses are denied the right to work or can do this only under unduly burdensome conditions; in the current negotiations, Canada has made an initial offer to address the issue of spousal employment. In addition, employers and/or employees may be charged excessive fees for work permits. In the present negotiations, all countries seek to ensure full national treatment for their commercial presence; such treatment should also apply to mode 4.

### **III. MODALITIES FOR LIBERALIZATION AND FACILITATION OF TRADE IN MODE 4 AND POLICY RECOMMENDATIONS ON ISSUES OF PRIORITY INTEREST TO DEVELOPING COUNTRIES**

30. Strengthening of the international framework and institutions or rules that govern MNP is important for two reasons: to ensure the rights of the concerned persons (where the International Labour Organization plays a leading role), and to ensure transparent and uniform multilateral rules that safeguard the core MFN principle of international trade. The existence of bilateral government-to-government agreements in the area of MNP is a departure from the core MFN principle and is the basis for maintaining MFN exemptions in the GATS context.<sup>28</sup> In principle, the next five years should see abandonment of this clause and extension of all current preferences on a MFN basis. Bilateral agreements will retain their role in addressing specific issues that go beyond the GATS (e.g. targeting MNP in specialized industries or facilitating movement).

31. The issues and problems associated with mode 4 cannot be addressed by individual countries acting unilaterally. There is a need for dialogue among countries about mode-4-related flows and for strengthening the institutional framework governing mode-4-related flows. The exchange of information on market needs and procedures linked to temporary movement could lead to an international labour exchange,<sup>29</sup> providing information on international labour markets as is currently done for financial markets. The experience in the Uruguay Round and the extended negotiations on financial services point to the usefulness of the exchange of information, including on national regulatory regimes, with regular updating on changes. It would seek to achieve some harmonization of policies among destination countries for mode-4-related movement at the highest common denominator providing for meaningful and significant market access, and develop coordination of policies among countries of origin.<sup>30</sup>

---

<sup>28</sup> New Zealand has deleted its mode 4 related MFN exemption in a new offer.

<sup>29</sup> Nayyar D, ed. *Governing Globalization*. Oxford University Press.

<sup>30</sup> The International Organization for Migration is increasing its efforts and impact in developing regions in this regard.

32. The present GATS negotiations are expected to deliver direct development dividends to developing countries as part of the Doha Agenda by providing economically valuable market access and national treatment commitments by developed countries in terms of mode 4 for a critical mass of categories of persons of interest to developing countries, including persons other than those with high skills. Liberalization of market access in mode 4 is the common element and priority objective for developing countries in the services negotiations and the way to secure net gains from trade. To promote liberalization and correct asymmetries in the results of the Uruguay Round in mode 4, the GATS negotiations should aim to accomplish the following:

- (a) Establish a list of occupations<sup>31</sup> and relevant skill, qualifications and experience criteria that can be adapted to individual countries' needs; propose as a first priority occupations linked to services that involve both mode 1 and mode 4 trade;<sup>32</sup> for selected occupations<sup>33</sup> and sectors, bind market access as provided for in national legislation at the level of current access for temporary-employment-based visas and work permits; ENT need not apply within these limits;
- (b) Commercially meaningful market access for developing countries providers of services through mode 4 would include such services activities as tourism, construction, maintenance work and cleaning services. Commitments in these sectors would reflect a development-oriented negotiated outcome. Establishing a multilateral framework for addressing MNP in this area could be linked to and supplemented by bilateral agreements facilitating this movement in IMO;
- (c) Countries undertaking specific commitments in line with the Understanding on Commitments in Financial Services should explicitly refer in that sector to conditions for access of categories of natural persons under paragraph 9(b): specialists in computer services, telecommunication services, accountants, actuarial and legal specialists;
- (d) Consider approaches for extending MFN treatment for natural persons that are currently covered under bilateral agreements;
- (e) Genuine efforts<sup>34</sup> are required at the multilateral level to ensure that domestic regulation does not undermine market liberalization achieved for MNP. In addition, ongoing negotiations should achieve – as part of additional commitments, for example – transparency of qualification requirements and procedures for specifying the hierarchy of measures for obtaining recognition. Disciplines for the accession of developing countries to the existing MRAs may need to be developed, supported by the provision of technical assistance;

---

<sup>31</sup> For example, with reference to the ILO ISCO-88, jobs that would be classified in ISCO-88 major groups 1 to 8 can be considered as 'skilled' or 'highly skilled' and those in major group 9 (Elementary occupations) as 'unskilled'.

<sup>32</sup> For example, IT services and technical support, accounting, bookkeeping and taxation services, financial services at all levels, architectural and engineering design, and some medical services.

<sup>33</sup> A detailed list of occupations is presented in a Communication to WTO by India (S/CSS/W/12). The proposed list includes legal, accounting, medical and dental, veterinary and nursing services.

<sup>34</sup> Communication to WTO from Japan, JOB(03)/45/Rev.1, 2 May 2003, explicitly excludes mode 4 in developing disciplines under domestic regulation (Article VI of the GATS).



- (f) To improve transparency, all existing limitations on MNP, the removal of which may not be possible at present, could be bound by individual countries as a way to improve predictability of access and avoid future roll-back;
- (g) Provision should be made for notification and review of labour regimes in a dedicated committee under the Council for Trade in Services
- (h) A reference paper could be drafted to establish a framework for the facilitation of MNP, outlining principles for all administrative procedures, including definition and criteria for ENT, mechanisms concerning granting of recognition, and transparency related to information on market access, and defining conditions for extending national treatment;
- (i) Data and information gaps continue to persist in the area of MNP. Progress has been achieved by the Interagency Task Force in developing a Manual on Statistics of International Trade in Services.<sup>35</sup> However, additional work needs to be undertaken to advance in the area of data availability for mode 4.

33. Research in the area of mode 4 remains in its infancy for many reasons, availability of valid data being one of them. It is important to promote the analysis of different factors and drivers in the area of mode 4, trying to identify the rate of return of temporary service providers, which would lead to a better understanding of the multiplier effect of mode-4-related trade on the country of origin and bottlenecks occurring in trade in this area. Mode-4-related trade may need a financing mechanism to facilitate movement abroad, especially where such movement involves SMEs from developing countries, and possible approaches need to be discussed. Furthermore, the value of trade in mode 4 has to be better understood and quantified in order to assess the modal importance of trade in services and compare the weight of mode 4 to that of other modes of supply, as well as to study multiplier effects.

---

<sup>35</sup> United Nations, ST/ESA/STAT/SER.M/86, 2002.

## ANNEX

### Comparison of GATS initial negotiating offers by developed countries in the areas of possible interest to developing countries

Country <sup>36</sup>	ICT <sup>37</sup> : specialist, (duration of stay)	Subject to economic needs test?	Contractual service providers <sup>38</sup> :		Subject to economic needs test?	Sectors/ Occupations covered	National <sup>39</sup> treatment granted?	MFN exemptions maintained?
			Companies	Individuals				
Australia	Yes (2 years extended by 2 more)	Yes (with 1 exception)					Yes	No
<b>Canada</b>	Yes, (5 years maximum)	No		<b>Self-employed; Independent:</b> a contract with juridical or natural person up to 1 year renewable	No; Quota of 10 IT specialists per project	1. Engineers, 2. Agrologists 3. Architects, urban planners, land surveyors, 4. Forestry, 5. Geomatics professionals 7. Foreign legal consultants 8. Senior computer specialists	Yes with some exemptions in Quebec; Spouses and common law partners may qualify for a work permit;	Services incidental to agriculture
<b>Iceland</b>	Yes, unspecified	No						No
Liechtenstein	Yes, (3 years)	Yes, fixed overall number of work permits Maybe		Persons with an open-ended or prolongable contract are excluded			No	Reciprocity based
<b>Norway</b>	Yes, (for 4 years)	No		Yes, 3 months during 1 year. Employed by the recipient of service.	No	All sectors	Not for subsidies	No
<b>New Zealand</b>	Yes, (3 years plus 3 more)	No				100+ occupations based on Shortage list	Yes	Interpreters in Tourism industries

<sup>36</sup> Countries that have made improvements in their new initial offers on services under the GATS are in bold.

<sup>37</sup> Intra-corporate transferees who are transferred in a capacity of specialists.

<sup>38</sup> Contractual service providers are those without commercial establishment in the host economy providing services under a contract. See Box 3 for details.

<sup>39</sup> This only refers to measures contained in the schedule of specific commitment, and not granting of effective national treatment at large.

Country	ICT: specialist (duration of stay)	Subject to economic needs test?	Contractual providers		Subject to economic needs test?	Sectors/Occupations	National Treatment granted	MFN exemptions
			Companies	Individuals				
<b>The EC</b>	Yes (maximum 3 years) Also includes <i>Graduate trainees</i> (1 year)	No	Contract of 1 year with the final consumer, entry for cumulative 6 months per Member in a year <b>Scope:</b> 22 sub-sectors, commitment by all members in 12 of them	<b>Independent professional as self-employed:</b> services contract with a final consumer of 1 year; entry for cumulative 6 months per Member in a year	Removed, Numerical ceiling to be negotiated, but is waived for 5 Members	For independent professional: 1. Architectural, urban planning, landscape architecture; 2. Engineering and integrated engineering; 3. Computer and related; 4. Management consulting and related; 5. Translation services.	Not for recognition of diplomas	Construction, hotel, catering; seasonal shortages; waiver of nationality requirement in Portugal; facilitation of access in France; waiver of work permit in the UK.
<b>Japan</b>	Yes, (1 or 3 years, may be extended)	Maybe		Yes, 1 or 3 years+	Maybe	Consultancy on home law; For other legal, accountancy: must be qualified in Japan	Yes	No
				Yes, 1 or 3 years+ Personal contract with public or private organization	Maybe, unspecified reference to laws	Engineers; Specialist in humanities/ International Services		
<b>Switzerland</b>	Yes (3 years with possible extension by 2 years to a maximum of 5)	None for overall number of work permits. Maybe, authorization may contain elements of ENT	Yes, within a contract between companies (3 months in 1 year)	No, as they are considered as "seeking employment"	Yes, limited number of suppliers depending on task	1. Legal consultancy 2. Engineering 3. Consultancy related to installation of computer hardware 4. Software implementation 5. Auditing 6. Technical testing and analysis 7. Maintenance and repair of aircraft		Yes, for all other categories of natural persons
The USA	Yes (3 years, extended by 2 more)	Maybe 65,000 persons in specialty occupations		Yes, 3 years	Maybe	Fashion models and specialty occupations	No	Traders or investors; reciprocity for longshore work by crews